

1 MELINDA HAAG (CABN 132612)
United States Attorney
2
3 J. DOUGLAS WILSON (DCBN 412811)
Chief, Criminal Division
4
5 ANDREW M. SCOBLE (CABN 124940)
MATTHEW L. McCARTHY (CABN 217871)
Assistant United States Attorney

6 450 Golden Gate Avenue, Box 36055
7 San Francisco, California 94102-3495
Telephone: (415) 436-7200
8 FAX: (415) 436-7234
Matthew.mccarthy@usdoj.gov

9 Attorneys for United States of America

10
11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14 UNITED STATES OF AMERICA,) CASE NO. CR 11-0293 CRB
15 Plaintiff,) CR 11-0506 CRB
16 v.)
17 LUIS AMILAR-ZANAS,) UNITED STATES' SENTENCING
18 Defendant.) MEMORANDUM
19
20
21
22
23
24
25
26
27
28

INTRODUCTION

Defendant Luis Amilar-Zanas pleaded guilty in Case CR 11-0293 to Racketeering Conspiracy in violation of 18 U.S.C. § 1962(d) and 18 U.S.C. § 2 (Count I) and Carrying and Using a Firearm During and in Relation to a Crime of Violence Resulting in Death in violation of 18 U.S.C. § 924(j)(1) (Count V). He pleaded guilty in Case CR 11-0506 to Illegal Reentry Following Deportation in violation of 8 U.S.C. § 1326(a) and (b)(2). Pursuant to his Plea Agreement, both the defendant and the government are requesting a total sentence of 27 years (324 months). The U.S. Probation Officer has recommended a sentence of 30 years (360 months). For the reasons set forth below, the United States believes that a sentence of 27 years is appropriate in this case.

OFFENSE CONDUCT

The records in this case reveal the following, which is not in dispute:

At all times relevant to this matter, an enterprise known as La Mara Salvatrucha, also known as the MS-13 gang (hereafter “MS-13”), existed. MS-13 is an international gang that has members and operates in, among other places, El Salvador, Mexico, Honduras, and the United States. MS-13 members are a group of individuals associated in fact who are engaged in, and the activities of which affect, interstate and foreign commerce. The enterprise is engaged in, and its activities affect, interstate and foreign commerce, in that, among other things: members of MS-13 travel across state and international lines in order to attend gang meetings at which gang business is discussed; MS-13 members use cellular telephones to make calls to “big homies” – that is, gang leaders – in El Salvador to discuss gang business, including obtaining authorization to punish gang members for violations of gang rules, or even to “green light” – that is, to kill – gang members believed to be cooperating with law enforcement; members of MS-13 traffic in controlled substances; and members of MS-13 transport guns and ammunition across state lines for use in attacking gang rivals. MS-13 constitutes an ongoing organization whose members function as a continuing unit for a common purpose of achieving the objectives of the enterprise. Among other crimes, MS-13 members are involved in murder, assaults, other acts of violence, obstruction of justice, and witness tampering.

The defendant was jumped into MS-13 in El Salvador in 1991, and from that date and continuing to the present, he agreed to conduct and to participate in the conduct of the affairs of the gang through a

1 pattern of racketeering activity. He agreed that a conspirator would commit at least two acts of
2 racketeering in the conduct of the affairs of MS-13, including acts involving: (i) murder, conspiracy to
3 murder, and attempted murder; (ii) obstruction of justice; and (iii) tampering with witnesses and
4 attempting to tamper with witnesses.

5 Since at least April 2011, the defendant has been a member of MS-13 in the United States, using
6 the gang moniker “Trucha” or “Yomo.” To maintain and increase his position in MS-13, he agreed that
7 a member of MS-13 would kill members of rival gangs – for instance, gang members called Norteños –
8 and others who defied or betrayed MS-13, such as individuals who cooperated with law enforcement
9 against the gang.

10 Beginning on or about June 20, 2010, and continuing into the early hours of June 21, 2010, the
11 defendant and other MS-13 members took a “Mission 14 line” bus from San Francisco toward Daly
12 City. The defendants brought with him a loaded firearm in a backpack. They saw an apparent Norteño
13 get on the bus and then sit down near them. The defendant later learned that the victim’s name was
14 Alexander Temaj-Castanon. The defendant got off the bus before the end of the line, and one of his co-
15 defendants asked him to leave the backpack with the loaded firearm with the co-defendants. The
16 defendant knew the firearm would be used to shoot and try to kill the apparent Norteño, and he gave his
17 co-defendants the backpack intending that they would use the gun to do so. Alexander Temaj-Castanon
18 died as a result of his gunshot wounds.

19 With respect to the violation of 8 U.S.C. § 1326, the following facts are not in dispute:

20 At all times material to the charge, the defendant has been and is a native and citizen of El
21 Salvador. In or about April 2001, he voluntarily and knowingly entered the United States, and
22 knowingly remained in the United States, without first obtaining the consent of the Attorney General of
23 the United States or the Secretary of the Department of Homeland Security for an application for his
24 admission. On or about July 24, 2003, in the State of Virginia, he was convicted of a felony offense of
25 robbery, which qualifies as a conviction for a felony crime of violence for purposes of sentencing. On
26 or about January 7, 2004, he was removed from the United States and returned to El Salvador. Prior to
27 April 5, 2005 (when he was arrested in Houston, Texas) he voluntarily and knowingly entered the
28 United States, and knowingly remained in the United States, without first obtaining the consent of either

1 the Attorney General of the United States or the Secretary of the Department of Homeland Security to
 2 his application for admission to the United States. In or about June 9, 2005, he was removed from the
 3 United States and returned to El Salvador. Subsequently, he voluntarily and knowingly entered the
 4 United States, and continuing until in or about February 2011, he knowingly remained in the United
 5 States, without first obtaining the consent of either the Attorney General of the United States or the
 6 Secretary of the Department of Homeland Security to his application for admission to the United States.

7 **LEGAL STANDARD AT SENTENCING**

8 Under Ninth Circuit case law, the Court should impose a sentence sufficient, but not greater than
 9 necessary, to reflect the purposes of sentencing that Congress identified in 18 U.S.C. § 3553(a)(2).
 10 *United States v. Carty*, 520 F.3d 984, 991 (9th Cir. 2008). The Court should begin the process of
 11 determining an appropriate sentence by calculating the correct guidelines range. *Carty*, 520 F.3d at 991.

12 Although the guidelines are not binding, they “reflect a rough approximation of sentences that
 13 might achieve section 3553(a)’s objectives.” *United States v. Rita*, 127 S. Ct. 2456, 2464 (2007). The
 14 guidelines range will be the starting point and the initial benchmark for the sentence. *Carty*, 520 F.3d at
 15 991. The Court should keep the guidelines range in mind throughout the process, allow the parties to
 16 argue for a sentence they believe is appropriate, and consider the factors identified in 18 U.S.C.
 17 § 3553(a). *Id.*

18 If the Court imposes a sentence outside the guidelines range, it should ensure that its
 19 justification for deviating from the range is sufficiently compelling to support the degree of variance in
 20 the sentence that it imposes. *Carty*, 520 F.3d at 991. The Court should make an individualized
 21 determination based on the facts of each case. *Id.* The Court, however, is not required to raise every
 22 possible relevant issue *sua sponte*. *Id.*

23 **I.**

24 **324 MONTHS IMPRISONMENT IS THE APPROPRIATE SENTENCE**

25 **A. The Correct Guidelines Range Is 324-405 Months**

26 **1. The Guidelines Calculation**

27 The government believes that the following sentencing guidelines calculation is correct as to the
 28 violation of 18 U.S.C. § 1962(d):

1	a. Base Offense Level, U.S.S.G. § 2E1.1(a):	43
2	b. Adjusted Offense Level:	43

3 The government believes that the following sentencing guidelines calculation is correct as to the
 4 violation of 8 U.S.C. § 1326:

5	a. Base Offense Level, U.S.S.G. § 2L1.2:	8
6	b. Specific Offense Characteristic, U.S.S.G. § 2L1.2(b)(1)(A)	+16
7	c. Adjusted Offense Level:	24

8 The government believes that the offense group as follows:

9	a. Combined Adjusted Offense Level:	43
10	b. Acceptance of Responsibility:	-3
11	c. Combined Total Offense Level:	40

12 The violation of 924(j)(1) requires the imposition of a 10-year sentence consecutive to any other
 13 term of imprisonment.

14 **2. The Defendant's Criminal History Category Is CHC III**

15 The Probation Office correctly calculated the defendant to have a Criminal History Category of
 16 III. (PSR ¶ 93.)

17 **3. The Correct Guidelines Range Is 360 - Life**

18 The Guidelines range for Offense Level 40 and CHC III is 360 months to life. USSG, Ch. 5,
 19 Part A - Sentencing Table.

20 **B. 324 Months Imprisonment Is An Appropriate Sentence Considering The Nature And
 Circumstances Of The Offense And The History And Characteristics Of The Defendant**

22 The government believes that a 27 year (324 month) term of imprisonment for this 35 year-old
 23 defendant is appropriate in this case. The government has reached this conclusion after a careful
 24 consideration of all of the facts of this case, consultation with the family of the victim, and lengthy
 25 negotiations with counsel for the defendant.

26 As set forth in detail in the PSR, the defendant conspired to murder a man simply because he
 27 believed that man to be a member of a rival gang. The defendant did so in order to secure and advance
 28 his standing in his own gang, MS-13. For these reasons, and the reasons set forth in the PSR, the

1 proposed sentence of 27 years is sufficient, but not greater than necessary, to reflect the purposes of
2 sentencing that Congress identified in 18 U.S.C. § 3553(a)(2).

3 The U.S. Probation Officer recommends a sentence of 360 months, the low end of the applicable
4 Guidelines Range. The defendant's guidelines range is higher than that of his co-defendants because of
5 his additional criminal history, which is a factor the Court should consider in fashioning the appropriate
6 sentence. However, the government believes that the Court should also take into account the
7 defendant's role in the offense. Unlike the two co-defendants, the defendant did not actually shoot the
8 victim. Indeed, he was not present when the victim was murdered. On the other hand, as discussed
9 above and in the PSR, the defendant provided the murder weapon with the knowledge and intent that it
10 be used to commit the murder. That fact, along with his criminal history, supports a sentence of the
11 same duration as the co-defendants – 27 years.

12 **CONCLUSION**

13 For the reasons set forth above, the government respectfully requests that the Court sentence the
14 defendant to 324 months imprisonment, followed by five years of supervised release with the terms and
15 conditions as recommended in the PSR.

16
17 DATED: October 15, 2014

MELINDA HAAG
United States Attorney

18
19 /S/
20 ANDREW M. SCOBLE
MATTHEW L. McCARTHY
Assistant United States Attorneys